



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 27, 1998

MEMORANDUM

Audit Referral 98-02

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA *RJ*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BOB BARR - CONGRESS - MATTERS REFERABLE TO
THE OFFICE OF GENERAL COUNSEL

On February 18, 1998, the Commission approved the Final Audit Report on Bob Barr — Congress. The audit report was released to the public on February 27, 1998. Two findings are being referred to your office:

II.A. Apparent Excessive contributions - Individuals

II.F. 48 Hour Notices - Individual and Political Committees

Should you have any questions regarding these matters, please contact Rhonda Simmons or Russ Bruner at 219-3720. Workpapers are available for your review if necessary.

Attachments as stated

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. APPARENT EXCESSIVE CONTRIBUTIONS

Sections 441a(a)(1)(A) and (a)(2)(A) of Title 2 of the United States Code state, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000 and that no multi-candidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Sections 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Additionally, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the

treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. Furthermore, a contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor.

If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions set forth in 11 CFR 110.1(b) or (d), as appropriate, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request a return of the excessive portion of the contribution if it is not intended to be a joint contribution; and, within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide a written reattribution of the contribution which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

The Audit staff was provided with a computer file to support contributions received by the Committee. In addition, deposit records which included copies of contributor checks and/or deposit tickets with contributor names were available for the majority of contributions. The copies of contributor checks were ordered by deposit for the period of January 27, 1995 (the date of the first deposit) through August 31, 1996, and the documentation available for this time frame was 98% complete. For the period of September 1, through December 31, 1996, the checks were in no identifiable order. For this period of time, documentation was incomplete. Deposit tickets with supporting check copies were found for 46% (\$176,203) of receipts and deposit tickets with incomplete check copies were found for 41% (\$158,605). In addition, random check copies totaling about \$296,280 or 77% of total amounts for this period were available. These checks were sorted alphabetically to facilitate testing.

The receipts database and the contributor checks were utilized in a combination of reviews to determine if contributions in excess of the limitation were received. Based on these reviews, the Audit staff identified 94 contributions from 72 individuals which exceed the limitations by \$54,971.

Further review of these excessive contributions revealed the following reporting irregularities:

- ° Twelve of the excessive contributions (from individuals) totaling \$7,945 were not itemized on Schedules A although our testing did not indicate a material overall failure to itemize contributions.
- ° Twenty-four contributions were attributed to multiple account holders on the Committee's disclosure reports but the contribution documentation contained the signature of only one contributor. No signed reattributions were located in the Committee's files.
- ° Nineteen contributions were allocated between the primary and general Elections on the Committee's disclosure reports or were disclosed as general election contributions but dated before the primary. No signed designations or redesignation correspondence was located in the Committee's records.
- ° Finally, one \$2,000 check was itemized as a \$1,000 contribution.

The Committee received numerous inquiries from the Commission's Reports Analysis Division concerning excessive contributions. Its response was to amend Schedules A and disclose the contributions as attributed to another person or to attribute part or all of a contribution to another election. The audit did not find the requisite documentation to support these actions. Based upon the results of this review, it appears that the Committee was internally reattributing and redesignating contributions without the required authorizations.

Previously, the Commission conducted an audit of Congressman Barr's 1993-1994 Committee. The report which presents the results of this audit was issued on April 19, 1996. During this audit, many of the same problems were noted. As a result of that audit, 62 contributions from 47 contributors were identified that exceeded contribution limitations by \$40,804. Irregularities in the itemization and disclosure of many of these contributions were similar to the reporting problems noted above. In addition, in the earlier audit, notes were found on the photocopies of three excessive contribution checks. These notes indicated that the Committee was aware that the contributions were excessive and either did not record them, or recorded them so that they did not appear to be excessive. Also, 12 contributors who made excessive contributions in the 1993-1994 election cycle also made excessive contributions in the 1995-1996 election cycle.

In September of 1996, the Committee wrote numerous contribution refund checks. These checks were subsequently voided² and reissued in October of 1996. When the Audit staff questioned the voiding of the September refunds, a Committee

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The Audit staff was not able to see actual copies of voided checks because the Committee treasurer did not keep them. The Treasurer informed the Audit staff that he had disposed of voided or spoiled checks.

representative intimated that the Committee wanted to keep their cash on hand position looking as strong as possible on their reports. Fifty-four refunds totaling \$36,626 relating to the excessive contributions noted above were made³. At the time of the interim audit report, \$18,345 in unresolved excessive contributions remained. None of the refunds made were within allowable time limits.

The Audit staff's review also identified apparent excessive contributions from two registered political committees. The Committee received a \$2,000 check dated September 24, 1996, for the general election from the Carpet and Rug Institute, a non-qualified political committee, and three contributions totaling \$10,000 (\$500- 8/2/95, \$4,500 - 11/8/95 and \$5,000 - 3/27/96) from the Lockheed Martin Employees' Political Action Committee for the primary election. The Committee refunded \$5,000 to Lockheed Martin on April 28, 1997. This refund was untimely. The Committee had not refunded any money to the Carpet and Rug Institute.

At the exit conference, the Committee was supplied with workpapers documenting the excessive contributions. Committee representatives indicated that they were surprised at the amount of unresolved contributions, but agreed to review each one carefully. They indicated that procedures were being put into place to avoid any future problems.

In the interim audit report, the Committee was requested to provide evidence demonstrating that the contributions in question were not excessive. Absent such evidence, the Committee was to refund the remaining excessive contributions and provide evidence of such refunds (copies of the front and back of the canceled checks). If sufficient funds were not available, those contributions requiring refunds would be disclosed as debts on Schedule D (Debts and Obligations) until such time as funds became available.

In response to the interim audit report, the Committee demonstrated that two contributions from one individual, totaling \$4,000, were not excessive.⁴ The remaining excessive contributions, totaling \$16,345, were refunded and copies of the front of the checks were provided. In its written response the Committee stated that it would "submit copies of the front and back of negotiated checks when available." To date, they have not done so.

³ As of February 28, 1997, all but four (\$2,350) of these refund checks have cleared the Committee's checking account. The contributions associated with these checks were included in total excessive amounts and the Committee re-issued refund checks to the contributors.

⁴ The Committee supplied documentation showing that contributions thought to be from one contributor were in fact four separate in-kind contributions of \$1,000 each, attributable to the contributor and his spouse. This in fact caused a smaller excessive amount for the spouse, which the Committee refunded.

In addition to refunding contributions to excessive contributors, the Committee stated that:

the failure to detect these excessive contributions was due to a data management that could not keep up with the volume of contributions. Any errors are ones of omission rather than commission. Although the committee made efforts to either reattribute or redesignate the funds in question (as was the case in the 1994 election cycle),[§] such efforts did not strictly comply with the applicable regulations.

The Committee sent a copy of a redesignation form it states was used during the 1996 election cycle. The Audit staff had reviewed available redesignation and reattribution letters during the audit and found only four that related to excessive contributions. Of these, one redesignation letter was signed by a person other than the contributor, two letters redesignated contributions to the general election but the contributor had also made excessive contributions for that election, and one letter appropriately redesignated the excessive amount but the Committee refunded the contribution anyway. No other redesignation or reattribution documentation has been provided.

The Committee also filed comprehensive amended disclosure reports for years 1995 and 1996 that materially corrected the disclosure errors noted above.

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In its written response, the Committee objected to the Audit staff's statement that notes found on three photocopies of checks indicated that the Committee was aware that the contributions were excessive and either did not record them or recorded them so that they did not appear to be excessive.

F. FAILURE TO FILE FORTY-EIGHT HOUR NOTICES

Section 434(a)(6) of Title 2 of the United States Code states, in relevant part, a principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

The Audit staff's review identified 19 contributions, totaling \$29,804, deposited between June 20, 1996 and July 6, 1996, requiring 48 hour notices for the primary election. The Committee failed to file the required notices for all of these contributions. In addition, between October 17, 1996 and November 2, 1996, 60 contributions, totaling \$74,000, required 48 hour notices to be filed for the general election. The Committee did not file notices for 18 contributions totaling \$20,000.

The Audit staff informed the Committee of this problem at the exit conference and provided workpapers which identified these contributions. The Committee representatives responded that they did not think notices were required for the primary election because Congressman Barr was unopposed in that election. As for the notices required for the general election, the Committee responded that they thought all required notices had been filed.

The Audit staff's recommendation in the interim audit report requested that the Committee submit evidence that all required notices were filed or submit any written comments it felt would be relevant to this issue.

In its response, the Committee conceded that it had failed to file all required notices for the primary election and 18 notices for the general. The Committee stated in relevant part:

This failure was due to a misunderstanding of the applicable law. Since the candidate was unopposed in the primary, the committee assumed that such notices were rendered unnecessary.

As for the general election, the Audit establishes that the Committee filed 48-hour notices for at least 42 of 60 contributions requiring such notices (over two thirds). Despite the Committee's prior good faith belief that all required notices had been filed, the committee concedes that 48-hour notices were not filed for the remaining contributions.